

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Waiver of the September 30, 2000	)	
Deadline for the Implementation of	)	
Non-recurring Services by	)	
	)	
Baldwin County Board of Education	)	
Bay Minette, Alabama	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**ORDER**

**Adopted: March 26, 2001**

**Released: March 27, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. In this order, we extend the September 30, 2000 deadline for implementation of non-recurring services for Year 2 to September 30, 2001 for Baldwin County Board of Education (Baldwin) who was, through no fault of its own, unable to complete installation on non-recurring services by September 30, 2000.

2. The Commission's rules require schools and libraries to implement services for which discounts have been committed by the Universal Service Administrative Company (Administrator) within the funding year the discounts were sought.<sup>1</sup> On November 1, 2000, the Common Carrier Bureau (Bureau) issued an Order that extended the September 30, 2000 deadline for implementation of non-recurring services for eligible schools and libraries applying for universal service support who were unable, through no fault of their own, to complete installation of non-recurring services by the deadline.<sup>2</sup> The applicant must have submitted

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (subsequent history omitted). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96045, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14921, para. 9 (1998)(*Fifth Reconsideration Order*); 47 C.F.R. § 54.507(d), (e). Schools and libraries are required to use their discounts for non-recurring services by June 30, but the Year 2 deadline was extended from June 30, 2000 to September 30, 2000. See *Fifth Reconsideration Order*, 13 FCC Rcd at 14916, para. 1, and 14920, para. 8; *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 15 FCC Rcd 8064 (Com. Car. Bur. 2000) (*May 2000 Extension Order*).

<sup>2</sup> See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-2444 (Com. Car. Bur., rel. November 1, 2000) (*November 2000 Extension Order*). Specifically, the deadline was extended to September 30, 2001 for those applicants: (1) whose Year Two funding commitment letters were issued by the Universal Service Administrative Company on or after April 4, 2000; (2) who received service provider change (continued....)

documentation to the Administrator prior to the expiration of the September 30, 2000 deadline requesting relief on the grounds that its service provider was unable to deliver the services due to events beyond the service provider's control, such as labor walk-outs or natural disasters.<sup>3</sup>

3. On December 27, 2000, the Bureau issued an Order that granted a limited waiver of the Commission's competitive bidding requirements for the universal service support mechanism for eligible schools and libraries with existing contracts for non-recurring services.<sup>4</sup> Applicants eligible for an extension of the Year 2 deadline to September 30, 2001, under the *November 2000 Extension Order*, were able to extend their existing contracts for non-recurring services voluntarily until September 30, 2001 without having to comply with the Commission's competitive bidding process.

4. As a result of delays in manufacturing and a component shortage, Baldwin did not receive delivery of various products before the September 30, 2000 deadline. Baldwin sent a letter dated October 6, 2000 to the Schools and Libraries Division requesting an extension.<sup>5</sup> On November 8, 2000, Baldwin submitted documentation to the Administrator that its service provider was unable to deliver non-recurring services before September 30, 2000 due to manufacturing delays.<sup>6</sup>

5. As noted by the Court of Appeals for the D.C. Circuit, agency rules are presumed valid.<sup>7</sup> The Commission's rules, however, may be waived for good cause shown.<sup>8</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In addition, the Commission may take into

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authorizations or service substitution authorizations from the Administrator on or after April 4, 2000; (3) whose service providers were unable to complete implementation for reasons beyond the service provider's control; or (4) who had their funding disbursements delayed while the Administrator investigated their applications for program compliance.

<sup>3</sup> See *November 2000 Extension Order*, at para. 9.

<sup>4</sup> See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-2900 (Com. Car. Bur., rel. December 27, 2000) (*December 2000 Order*). See also *May 2000 Extension Order*, 15 FCC Rcd at 8068, para. 8; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration 14 FCC Rcd 5983, 5991-94, paras. 17-23 (1999); 47 C.F.R. § 54.504(a).

<sup>5</sup> Letter from Fran Pridgeon, Baldwin County Board of Education, Bay Minette, Alabama, to Schools and Libraries Division, Universal Service Administrative Company, dated October 6, 2000.

<sup>6</sup> Letter from Fran Pridgeon, Baldwin County Board of Education, Bay Minette, Alabama, to Federal Communications Commission, filed November 8, 2000, at Attachment (Letter from Patrick Hunter, Cisco Systems, to Baldwin County Board of Education, Bay Minette, Alabama, dated November 2, 2000).

<sup>7</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>10</sup> Waiver of the deadline for implementation of non-recurring services is therefore appropriate only if special circumstances warrant a deviation from the general rule established in that Order, and such a deviation would serve the public interest.<sup>11</sup>

6. We find that good cause has been shown to warrant an extension of the deadline for implementation of non-recurring services to September 30, 2001 for Baldwin. Baldwin's service provider was unable to complete installation by September 30, 2000 due to manufacturing delays, and as a result, there was insufficient time before the installation deadline for them to complete implementation of non-recurring services. Baldwin requested an extension from the Administrator on October 6, 2000 and submitted documentation regarding the delay on November 8, 2000. Although Baldwin did not meet the exact criteria outlined in the *November 2000 Extension Order*, we believe it would be consistent with the reasoning set forth in the Order to extend the deadline for Baldwin. In the *November 2000 Extension Order*, we noted that there may be situations beyond those described in which it may be consistent with the public interest to extend this deadline.<sup>12</sup> Baldwin, due to manufacturing delays outside of its service provider's control, did not complete its work prior to September 30, 2000. We believe that the public interest would be served if Baldwin had additional time to receive delivery and implement non-recurring services. Accordingly, consistent with the *November 2000 Extension Order*, we extend to September 30, 2001 the deadline by which Baldwin must install its non-recurring services.

7. Pursuant to the *December 2000 Order*, we also grant a limited waiver of the Commission's competitive bidding rules. Baldwin may extend their existing contracts for non-recurring services voluntarily until September 30, 2001, without having to comply with the Commission's competitive bidding process.

8. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the Request for Waiver filed by Baldwin County Board of Education IS GRANTED, and Baldwin's deadline for implementation of non-recurring services IS EXTENDED to September 30, 2001.

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<sup>10</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>11</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>12</sup> See *November 2000 Extension Order*, at para. 7.

9. IT IS FURTHER ORDERED that Baldwin may extend its existing contracts for non-recurring services voluntarily until September 30, 2001, without having to comply with the Commission's competitive bidding requirements.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau